

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF TEXAS
3 HOUSTON DIVISION

4 UNITED STATES OF AMERICA . CR. NO. H-09-494
5 VS. . HOUSTON, TEXAS
6 .
7 . JULY 28, 2011
8 NAIM JORGE-TOVAR . 10:30 A.M. to 10:45 A.M.

9
10 TRANSCRIPT of SENTENCING
11 BEFORE THE HONORABLE KEITH P. ELLISON
12 UNITED STATES DISTRICT JUDGE
13

14 APPEARANCES:

15 FOR THE GOVERNMENT: MR. JOSEPH C. MAGLIOLO, JR
16 Office of the U.S. Attorney
17 919 Milam
18 Suite 1500
19 Houston, Texas 77208

20
21 FOR THE DEFENDANT: MR. MIGUEL ANDRES SANCHEZ-ROSS
22 Federal Public Defender's Office
23 440 Louisiana
24 Suite 1350
25 Houston, Texas 77002

OFFICIAL COURT INTERPRETER: MS. EDITH PROSS

OFFICIAL COURT REPORTER: MS. KATHY L. METZGER
U.S. Courthouse
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Proceedings recorded by mechanical stenography, transcript
produced by computer-aided transcription.

P R O C E E D I N G S

(Proceedings through interpreter.)

THE COURT: Thank you. Please be seated.

We'll turn to the United States versus Jorge-Tovar. We'll take appearances of counsel and from probation.

MR. MAGLIOLO: Joe Magliolo for the United States, Your Honor. Good morning.

MR. SANCHEZ-ROSS: Andres Sanchez for Mr. Jorge-Tovar, Your Honor.

MR. RENTERIA: Good morning, Your Honor. Hugo Renteria with probation.

THE COURT: Thank you, Mr. Renteria.

All right. Good morning, sir. Do you go by Jorge-Tovar?

THE DEFENDANT: My name is Jorge-Tovar.

THE COURT: All right. Can you understand through the interpreter what's being said, sir?

THE DEFENDANT: Yes, sir.

THE COURT: I'm going to assume you understand everything being said unless you tell me differently. All right?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. I've reviewed Mr. Renteria's report. Have you reviewed it with your client,

1 Mr. Sanchez-Ross?

2 *MR. SANCHEZ-ROSS:* I have, Your Honor.

3 *THE COURT:* Do you wish to speak first or would like
4 to offer -- that I offer your client a chance to speak first?

5 *MR. SANCHEZ-ROSS:* Judge, I would speak first. It
6 will be relatively short.

7 *THE COURT:* Okay.

8 *MR. SANCHEZ-ROSS:* What I'm asking for, is for the
9 Court to follow the recommendation of the government.

10 *THE COURT:* A hundred and twenty months?

11 *MR. SANCHEZ-ROSS:* It's actually 72 months under the
12 5K motion that they filed yesterday.

13 *THE COURT:* I haven't gotten a 5K motion.

14 *MR. RENTERIA:* Judge, I have a copy of it.

15 *MR. MAGLIOLO:* I also have one, Your Honor. Sorry.

16 *THE COURT:* All right.

17 *MR. SANCHEZ-ROSS:* And, so, I guess I'll explain a
18 little more about --

19 *THE COURT:* Well, just give me a second to read this.

20 *MR. SANCHEZ-ROSS:* Sure, Your Honor.

21 *THE COURT:* All right. Okay. Thank you very much.

22 Return this to Mr. Renteria, please. Excuse me.

23 *MR. SANCHEZ-ROSS:* So, I would ask the Court to follow
24 the recommendations of the government. And if the Court needs
25 additional information about his cooperation or any additional

1 facts about the case, I'll be happy to provide those.

2 *THE COURT:* No, that's okay.

3 All right. Mr. Jorge-Tovar, would you like to
4 say anything about the issue of sentencing, sir? This is your
5 opportunity.

6 *THE DEFENDANT:* No, sir, everything is fine.

7 *THE COURT:* Okay. Mr. Magliolo?

8 *MR. MAGLIOLO:* No, Your Honor, just we ask that the
9 Court follow the defense and the government's recommendation,
10 to reduce the 120-month mandatory minimum to 72 months.

11 *THE COURT:* All right. Mr. Renteria?

12 *MR. RENTERIA:* Judge, probation has nothing further to
13 add.

14 *THE COURT:* Is it your recommendation that I still do
15 supervised release of 25 years and a fine of 5,000?

16 *MR. RENTERIA:* Well, Judge, the fine, yes. However,
17 as far as the supervised release goes, we would at least
18 recommend to the Court for at least a minimum of five years due
19 to unique nature of the specific conditions that are typically
20 attached to sex offender type cases.

21 *MR. SANCHEZ-ROSS:* In regard to the fine, Judge,
22 Mr. Naim Jorge-Tovar will be deported immediately after he's
23 served any sentence, so.

24 *THE COURT:* I'm sure of that.

25 *MR. MAGLIOLO:* There's also an issue of restitution

1 that we would broach with the Court. The government is --
2 there is an issue of restitution, but it has not been
3 determined yet, but because of this type case, I think the
4 Court -- we need to put the Court -- make it aware that there
5 is an issue of restitution. And I believe that is -- that's
6 correct.

7 *MR. RENTERIA:* That's correct. The restitution in
8 this case is applicable and mandatory under the statute.
9 However, it hasn't been determined yet and we have no further
10 information on that.

11 *THE COURT:* Well, how is it going to be determined
12 though?

13 *MR. MAGLIOLO:* It will be determined from the victim,
14 Your Honor, but the victim -- probation tried to contact the
15 victim and the victim has not responded to probation. Victims
16 tend to be very guarded and the government is going to make an
17 effort to locate the victim and see what information we can
18 add. We think we'll have a better -- perhaps a better chance
19 than probation, but we'll make probation aware of our efforts.

20 *MR. SANCHEZ-ROSS:* Judge, my understanding -- about
21 the restitution issue, I've learned about it this morning. I'm
22 not faulting anyone. That's just why I'm not prepared to speak
23 too much more on this issue, but my understanding is the Court
24 has up to 90 days after the sentencing to determine the
25 restitution issue in situations like this when it has not yet

1 been determined. I guess if probation or the government has
2 any additional information within those 90 days, the Court
3 could set a hearing to determine the restitution issue.
4 Otherwise, it would just default to the --

5 *THE COURT:* No, I understand.

6 *MR. RENTERIA:* That's correct, Judge.

7 *MR. MAGLIOLO:* Yes, Your Honor.

8 *THE COURT:* Okay. Anything further then from anybody?

9 *MR. SANCHEZ-ROSS:* No, Your Honor.

10 *MR. MAGLIOLO:* No, Your Honor.

11 *THE COURT:* All right. The Court does adopt the
12 factual recitations in the report prepared by Mr. Renteria.
13 The recommendation section is also incorporated, except
14 otherwise noted.

15 The defendant is sentenced to a period of 72
16 months, because of the recommendation by the government, to be
17 followed by a five-year period of supervised release; a fine of
18 \$5,000; restitution to be determined; and a hundred-dollar
19 special assessment.

20 While on supervised release the defendant shall
21 not commit another crime, shall not possess a firearm or
22 destructive device.

23 If deported, the defendant is not to reenter the
24 United States illegally.

25 The defendant shall cooperate in the collection

1 of a DNA sample to the extent authorized by law.

2 The defendant shall report the address where he
3 will reside and any subsequent change of residence to the
4 probation officer.

5 The defendant shall not seek to reside, work, or
6 have access to schoolyards, parks, playgrounds, arcades, and
7 shall come within a hundred feet thereof.

8 Defendant shall not seek or maintain employment,
9 supervise, volunteer, or participate in any program where
10 minors under the age of 18 would congregate.

11 Defendant shall not have any contact with any
12 minor children under the age of 18 without prior permission of
13 probation.

14 Defendant shall not date or cohabitate with
15 anyone who has children under the age of 18, unless approved in
16 advance by the probation officer.

17 Defendant shall not view, possess, or have under
18 his control any depictions of children either sexually oriented
19 or sexually stimulating and shall not frequent anyplace where
20 such materials are available.

21 As to the payment, the recommendation as to how
22 payment should be received is adopted.

23 There's no right of appeal, because it's been
24 waived.

25 Mr. Tovar -- Jorge-Tovar, I do think what you've

1 done is the epicenter of evil, I really do. I hope this
2 sentence will remove from you any thought of ever engaging in
3 this kind of conduct again. And whatever restitution is
4 ultimately imposed by this Court, I hope you will on your own
5 seek to make restitution to your victim. I think what you've
6 done goes a long toward ruining her entire life.

7 Anything further?

8 *MR. MAGLIOLO:* No, Your Honor.

9 *MR. SANCHEZ-ROSS:* No, Your Honor.

10 *MR. RENTERIA:* Your Honor, just -- the government
11 moves to dismiss the indictment to Count 1?

12 *MR. MAGLIOLO:* We do, Your Honor. The defendant plead
13 to a superseding information. We will move to dismiss the
14 indictment as to Mr. Tovar, the original indictment.

15 *THE COURT:* Motion granted.

16 *MR. MAGLIOLO:* Thank you, Your Honor. One other
17 thing, Your Honor, next time I'll make sure the Court -- I'm
18 sorry the Court didn't get a copy of this. I'll make sure the
19 Court gets a courtesy copy.

20 *THE COURT:* No, not a problem. It happens a lot.

21 *MR. MAGLIOLO:* Thank you, Your Honor.

22 *(Concluded at 10:45 a.m.)*

23 * * *

24 I certify that the foregoing is a correct transcript from the
25 record of proceedings in the above-entitled cause, to the best

1 of my ability.

2

3 /s/ Kathy L. Metzger
Kathy L. Metzger
4 Official Court Reporter

4-19-12
Date

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